

Rules of
Department of Insurance
Division 200—Financial Examination
Chapter 8—Risk Retention

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Title 20—DEPARTMENT OF INSURANCE

Division 200—Financial Examination Chapter 8—Risk Retention

20 CSR 200-8.100 Federal Liability Risk Retention Act

PURPOSE: This rule effectuates or aids in the interpretation of sections 148.310–148.461, 375.161, 375.786, 384.051 and 384.059, RSMo 1986 as these sections relate to risk retention groups and purchasing groups.

(1) Risk retention groups as defined in 15 USCA Section 3901(a)(4), purchasing groups as defined in 15 USCA Section 3901(a)(5) and representatives of either will be deemed in compliance with sections 375.161 and 375.786, RSMo (1986) and other relevant insurance laws upon compliance with this regulation.

(2) As used in this regulation, the following terms have the following meanings:

(A) Director means the director of insurance of Missouri;

(B) Domicile, for the purposes of determining the state in which a risk retention group is domiciled, means—

1. For a corporation, the state in which the risk retention group is incorporated; and

2. For an unincorporated entity, the state of its principal place of business;

(C) Hazardous financial condition means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to—

1. Meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

2. Pay other obligations in the normal course of business;

(D) Insurance means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state;

(E) Plan of operation or a feasibility study means an analysis which presents the expected activities and results of a risk retention group including, at a minimum, the coverages, deductibles, coverage limits, rates and rating classification systems or schedules for each line of insurance the group intends to offer;

(F) Purchasing group means any group which—

1. Has as one (1) of its purposes the purchase of liability insurance on a group basis;

2. Purchases this insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (2)(F)3.;

3. Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and

4. Is domiciled in any state; and

(G) Risk retention group means any corporation or other limited liability association formed under the laws of any state, Bermuda or the Cayman Islands—

1. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group's members;

2. Which is organized for the primary purpose of conducting the activity described in paragraph (2)(G)1.;

3. Which—

A. Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

B. Before January 1, 1985 was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before this date, had certified to the insurance commissioner of at least one (1) state that it satisfied the capitalization requirements of that state, except that any group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Risk Retention Act of 1986);

4. Which does not exclude any person from membership in the group solely to provide for group members a competitive advantage over any person;

5. Which has as its members only persons who have an ownership interest in the group and which has as its owners only persons who are members who are provided insurance by the risk retention group; or has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group;

6. Whose members are engaged in businesses or activities similar or related with respect to the liability of which members are

exposed by virtue of any related, similar or common business trade, product, services, premises or operations;

7. Whose activities do not include the provision of insurance other than liability insurance for assuming and spreading all or any portion of the liability of its group members; and reinsurance with respect to the liability of any other risk retention group (or any members of this group) which is engaged in businesses or activities so that the group or member meets the requirement described in paragraph (2)(G)6. from membership in the risk retention group which provides reinsurance; and

8. The name of which includes the phrase risk retention group.

(3) Risk Retention Group. Every risk retention group chartered in states other than this state, seeking to do business as a risk retention group in this state, shall observe and abide by the laws of this state as follows. Each risk retention group shall register, before offering insurance in this state, with the director by submitting for approval to the director the information concerning the risk retention group as is prescribed in this rule.

(A) Notice of Operations. Any risk retention group doing business in this state shall submit to the director notice of operations consisting of—

1. A copy of its certificate of authority or license authorizing it to transact business as an insurance company, certified by the state of domicile;

2. A statement identifying the state(s) in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, the states in which the group intends to operate and other information, including information on its membership, as the director may require;

3. The identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverage to be afforded and the states in which the group intends to operate;

4. A copy of its plan of operations or a feasibility study and revisions to the plan of operation or feasibility study if any information contained in it shall change; and

5. A statement of registration on a form provided by the director which designates the director as its agent for the purpose of receiving service of legal documents or process.

(B) Financial Condition. Any risk retention group doing business in this state shall

submit to the director financial information consisting of—

1. A copy of the group's annual financial statement submitted to its state of domicile, which shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist (under criteria established by the National Association of Insurance Commissioners (NAIC));

2. Upon request by the director, a copy of any examination or audit performed with respect to the risk retention group; and

3. Information as may be required to verify its continuing qualification as a risk retention group.

(C) Taxation. All premiums paid for coverages within this state to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines and penalties for nonpayment as that applicable to foreign admitted insurers. Further, each risk retention group shall report all premiums paid to it for risks insured within the state (see sections 148.340 and 148.350, RSMo).

(D) Notice to Purchasers. Any policy issued by a risk retention group, other than a risk retention group which possesses a currently valid certificate of authority to transact insurance business from the director, shall contain, in ten (10)-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(E) Prohibited Acts Regarding Solicitation or Sale. The following acts by a risk retention group are prohibited:

1. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

2. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(F) Delinquency Proceedings. A risk retention group not chartered in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination.

(G) Examination Regarding Financial Condition. Any risk retention group must submit to an examination by the director to determine its financial condition if the director of the insurance department of the jurisdiction in which the group is chartered and licensed has not initiated an examination within sixty (60) days after a request by the commissioner of this state. Any examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the NAIC's financial *Examiners Handbook*.

(H) Licensing.

1. A risk retention group shall solicit members in Missouri only through insurance producers licensed by the director for casualty.

2. An insurance producer licensed by the director for casualty, on behalf of a client seeking insurance, may place insurance with any duly registered purchasing group or risk retention group in the same manner as placing insurance with an authorized insurance company.

(I) Compliance With Unfair Claims Settlement Practices Law. Any risk retention group shall observe and comply with the laws of this state concerning unfair claims settlement practices.

(J) Deceptive, False or Fraudulent Practices. Any risk retention group shall comply with the laws of this state regarding deceptive, false or fraudulent acts or practices. However, if the director seeks an injunction regarding this conduct, the injunction shall be obtained from a court of competent jurisdiction.

(K) Review by Director. The director shall review the information submitted by each risk retention group as provided in this rule to determine that the group is not in a hazardous financial condition or financially impaired and shall make a determination regarding registration. The director is authorized to prohibit the solicitation or sale of insurance in this state by, or the operation of, a risk retention group that is in a hazardous financial condition or which is financially impaired. In its investigation of the reasonably anticipated financial condition of an applicant risk retention group, the director shall take into account the premium structure indicated in the rating classification schedules submitted by that group, as schedules reflect the potential risk of financial impairment.

(L) Application for Registration.

1. A risk retention group currently registered with the director shall complete and file with the director an Application for Registration, which can be accessed at the department's website at www.insurance.state.mo.us.

The application must be filed no later than September 6, 1991. The risk retention group should notify the director of any change in the information in the application within thirty (30) days of any change. Failure to file or to update changes in the application will result in a forfeiture of the risk retention group's registration status with the director.

2. All new applicants for registration must complete and file with the director the Application for Registration. New applicants must submit a one hundred dollar (\$100) registration fee with the application.

3. All currently registered risk retention groups must pay an annual renewal fee of one hundred dollars (\$100) beginning on July 1, 1991. Failure to pay the renewal fee will result in a forfeiture of registration.

4. All new applicants shall not be required to pay the annual fee as described in subsection (4)(E) until the year following the year the applicant initially registered with the director.

(4) Purchasing Group. Every purchasing group seeking to do business in this state shall register with the director by submitting for approval to the director the information concerning the purchasing group as is prescribed in this rule.

(A) Notice of Operations. Any purchasing group doing business in this state shall submit to the director notice of operations consisting of a sworn statement—

1. Identifying the state(s) in which the purchasing group is domiciled, its principal place of business, the state(s) in which the group intends to operate and other information including information on its membership, as the director may require;

2. Listing the lines and classifications of liability insurance which the purchasing group intends to purchase;

3. Identifying the insurance company from which the group intends to purchase insurance and the domicile of the company; and

4. Stating that to the best of the affiant's knowledge the purchasing group has not and will not purchase from a risk retention group that is not licensed by the director as an insurance company or an eligible surplus lines insurer in Missouri.

(B) Any purchasing group doing business in this state shall submit to the director information as may be required to verify its continuing qualification as a purchasing group.

(C) Service of Process. Any notice of operation under subsection (4)(A) of this rule shall be accompanied by a statement of registration on a form provided by the director which designates the director as the

purchasing group's agent for the purpose of service of process.

(D) Taxes.

1. A purchasing group which purchases insurance from a nonadmitted insurer shall be subject to the surplus line premium tax under section 384.051 or 384.059, RSMo, whichever is applicable, for risks resident, located or to be performed in this state.

2. An admitted insurer which insures the members of a purchasing group shall treat the premiums of members with risks resident, located or to be performed in this state as premiums subject to premium tax under sections 148.310–148.461, RSMo.

(E) Application for Registration.

1. A purchasing group currently registered with the director shall complete and file with the director an Application for Registration, which can be accessed at the department's website at www.insurance.state.mo.us. The application must be filed by no later than September 6, 1991. The purchasing group should notify the director of any change in the information in the application within thirty (30) days of any change. Failure to file or to update changes in the application will result in a forfeiture of the purchasing group's registration status with the director.

2. All new applicants for registration must complete and file with the director the Application for Registration. New applicants must submit a one hundred dollar (\$100) registration fee with the application.

3. All currently registered purchasing groups must pay an annual renewal fee of one hundred dollars (\$100) beginning on July 1, 1991. Failure to pay the renewal fee will result in a forfeiture of registration.

4. All new applicants shall not be required to pay the annual fee as described in subsection (4)(E) until the year following the year the applicant initially registered with the director.

(F) Licensing.

1. A purchasing group located in Missouri shall procure insurance with an admitted company through an insurance producer licensed by the director for general casualty and insurance with a nonadmitted company through a surplus lines licensee licensed by the director.

2. Any purchasing group soliciting members in Missouri shall do so through an insurance producer licensed by the director for general casualty.

Amended: Filed April 23, 1999, effective Nov. 30, 1999. Amended: Filed July 12, 2002, effective Feb. 28, 2003.

**Original authority: 374.045, RSMo 1967, amended 1993, 1995.*

AUTHORITY: section 374.045.1(3), RSMo 2000. This rule was previously filed as 4 CSR 190-11.190. Original rule filed Aug. 12, 1988, effective Jan. 13, 1989. Amended: Filed Feb. 4, 1991, effective July 8, 1991.*